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Secretary
Federal Communications Commission
1919 M Street N. W. Room 222
Washington, DC 20554

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DEC 19 1994

FCC MAIL ROOM

RE: CC Docket 92-115 and 94-46 RM 8367 Release Date Nov., 15, 1994

Dear Sirs:

My name is Zachary Len Gibson and I am in the cellular refurbishing and technology business. In my business it is necessary for me to deal with Carriers and their techs throughout Canada, Mexico, South America and the US. The techs of these carriers would tell you the same they have told me concerning the FCC proposed ruling concerning EMULATION technology. They laughingly say there is NO WAY emulation can harm their system or software! My question is, "Are the Carriers committing perjury by telling the FCC that it will?"

The principal (and recurring/residual) revenue for agents and Carriers is based on the air-time usage.

With our extension service it can only line the pockets of the carriers and agents. Is it not impossible for a Doctor or attorney to talk on his car phone when he/she is at a seminar in an auditorium? They can if they are talking on a portable extension phone, increasing air-time usage, when outside the car. I can't understand the Carriers' reasoning for misrepresenting the facts to the FCC other than the fact they want the power to control their industry. Emulation by the honest businessman and cellular user is not hurting them.

The following letter was written to my Senator, Congressman, attorneys, and public radio and TV stations.

I feel you are going to get enough letters on the errors of the proposal in engineering and technological terms and it is for this reason I have decided to send this letter (with just a few adaptations) in more of layman's terms.

It has been my major concern (and I might add my goal in life) to do whatever I can to increase the quality of life for mankind. This might sound like "too great a goal" and "unobtainable" and self grandizement by some, but I believe some of my ideas will and have helped individuals as well as cities and countries. Communications can easily change a strategically important and yet poor village in the rain forests of Brazil near the Amazon River to an important center of hospitals and health, commerce and

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banking, and in general increase the living conditions and welfare of not just the community but for hundreds of miles literally over-night. If all it does is let a doctor explain to one person how to save a child's life, without personally being there to help, would make it all worthwhile. But it can do so much more than that; and innumerable times in a 24 hour period. Just the thought of it is awesome to me. While I consider myself an Independent and like to think of myself as someone who votes for the best person, not the party, I really feel there should be no politics involved in my endeavor. There is a question, however, of government, big business, special interests, fat cat lobbyist, and quite simply monopolies.

Years ago I started working on the idea of having two cellular phones (or more) on one telephone number. I call it "the cellular extension phone". No different from your home extension; you can't pick up the phone in the bedroom and call the phone in the kitchen and if someone is on the phone in the kitchen you can't dial out and connect with another party while it is in use; the same would apply to cellular (you would not, however, "hear" the conversation on the other cellular phone as you would on the home extension).

I envisioned this technology as being a very effective tool for security and safety for the business man that wanted another phone for his wife to carry with her in her purse or car in case of emergency. A son or daughter commuting to college in case the car broke down. I have even sold toy cellular phones to policemen to give their wives because they said that it was better than a gun! If and when someone wanting to cause hurt or harm "sees" the cellular and "knows" that 911 is immediate, they will back off real quick.

Or, how about the doctor, volunteer fireman or policeman who needs the power and clarity of a 3 watt (5 X's the power) install phone and external antenna (not just in remote and poor geographical cellular service areas with mountains and density (foliage); and how many times a day does your service in an ideal location like DFW does your service get dropped or lost?) while having the portability and accessibility of a 6/10 watt handheld cellular to complete the call, or emergency situation while now outside the car. This, quite frankly, in my mind is a "no brainer" win-win-win situation. The customer reduces his / her monthly service bill while increasing his airtime monthly bill and increasing the

revenues to the carrier. And I make a little money too. Quite frankly I don't make as much as I would if I were to sell the customer another serviced cellular number and let the customer pay for that additional service fee every month for the rest of their cellular life. A certified agent will make a residual on the airtime usage as well as an activation, program fee, profit on the phone and it's accessories. It is also not well known that the carriers' pay activation spiffs and benefits for a good percentage of all those full and half page ads you see in the papers everyday of every week.

I have talked with fireman's associations representatives, the police representatives over neighborhood watch patrols, and even one philanthropist that wanted to provide cellars for low income housing projects where phones were not available due to income and the crime and violence rate was high.

Well, for years the carriers have been telling "their" public that cellular extension phones were against the law and a federal offense. They have tagged me as a criminal who is defrauding them of millions of dollars a month while telling their consumers it was against the FCC Regulations.

IT IS NOT AND WAS NOT! BUT LOOK OUT CITIZEN! The Big Business is out to get you and they have the money and the lobbyist in the right political circles to take away your rights and it is at hand!

The FCC has made a report to "outlaw" the cellular extension phone for everyone but the carriers' themselves'. And what is worse the amendment even tells carriers how to get away with not offering the service if they don't want to (see 107). And I quote in part, "cellular carriers should explain to consumers who request this service that their system is not yet capable of providing it". and will more than likely never be because it is against their best interest and I guarantee they will never invest the MILLIONS required to adapt it if they don't have too. Without competition they will not attempt to follow SWBell and Metrocel.

The ruling in it's discussion starts out explaining about fraud in the cellular industry.

58.. DISCUSSION. The record before us demonstrates the need for measures that will help reduce fraudulent use of cellular equipment caused by tampering with the ESN (The ESN or electronic serial number is like a vin number on a car and identifies it from all other phones.). WE therefore, adopt the proposed rule. (This is quite true and while it is a problem in most types of business, I and those like me do all we can to prevent fraud and can even help control and police it.)

The absurdity of it all is it is people like myself, hard working, struggling, trying to make a day to day existence while still looking out for his fellow man (the other guy), and the ideals of humanity (and against big business trusts, monopolies, and defrauding the public) who is made out to be the "bad" person and helping "others" commit fraud.

For your information in the late 50's (1959), when I was eleven years old, my mother bought our first brand new house. My sister and I for the first time had a room of our own and we had "two" telephones! One of the phones was in the kitchen on one side of the house and the other was in our mother's room. Well it didn't take long before I had rigged up two more "extension phones" in the house for my sister and myself.

At the time it was illegal. If a single line, one phone house bill was, say, \$20.00 a month; each additional extension was another \$20.00 and you were also required to purchase the phone from your local carrier for that extension. Phones brought from other houses when moving and used phones were not allowed.

At the time the phone company could call your number and by reading the voltage on the line determine exactly how many phones you had on the service. If it did not compare with your service agreement they would come out like the Gestapo and treat you like a felon and threaten you within and inch of your life. Well, they did me and I gladly forfeited my 'rigged" phones and was very frightened and intimidated; and, at the time - wrong.

Well, somewhere around 1960 the law was changed and it not only allowed you to have extension phones at no additional monthly charge; they also allowed you to purchase your phone from Wal Mart or K Mart, but you were not required to buy it from the carriers. This I later found out was called the Carter Phone and Green Supreme Court Decisions. The US Justice Department took it to the Supreme Court because the people wouldn't stand for it and petitioned their rights. Which is the American way; but don't think it would have just happened eventually and don't even think the Bell's and the AT&T's didn't put up a hell of a fight. Well PEOPLE, it's happening again. Your rights are getting ready to be trampled again and this time even your congressman and senator might not even be aware of it to protect you (or to blame). I am sure that the "land line" phone carriers in those days had the same concerns and complaints then that the cellular carriers have today. Do you not think for one minute they didn't spend as much money if not

more in their day and time to put up the greatest telephone system in the world? And were they entitled to omnipotent rights? Yes, for years, but not after "OUR" Supreme Court decisions.

60. Further, we conclude (who is we? the people?) that the practice of altering cellular phones to "emulate" ESN's without receiving the permission (permission?) of the relevant cellular licensee should not be allowed because (1) simultaneous use of cellular telephones fraudulently (fraudulently? it isn't fraud when my customer has signed a sworn affidavit that he is responsible for the bill) emitting the same ESN without the licensee's permission could cause problems in some cellular systems such as erroneous tracking or billing (I defy one piece of proof from any carrier that emulation from a registered, bill paying citizen has or could possibly cause any problems resulting in damage or loss of money to their system and furthermore, it is technically impossible for two phones in the same carriers system to be accessed a call at the same time. So how can simultaneous use be fraud?) (2) fraudulent use of such phones without the licensee's permission could deprive cellular carriers of monthly per telephone revenues to which they are entitled (Oh really? I thought this was what the Green decision was all about. Now, let me see. If I buy my own phone with my own money and it is not given to me and required service (which, by the way, I am told is illegal; but not enforced) I can paint it green, set it on fire, purposely run over it with my lawnmower, but I can't pay to have it "emulated" as an extension phone and use it for what it is intended, like the phone I bought for my spare bedroom? Even when I know I am going to pay for the airtime usage and am not even attempting to defraud anyone? Is there something rotten in Denmark?

The FCC ruling stating that the carriers have a right and are entitled to the service fees' Carriers' say they are losing by emulated cellular phones is like reversing a Supreme Court Decision that clearly states they are not entitled.

BUT WAIT!

59. Contrary to the suggestion of one commenter, the ESN rule will not prevent a consumer from having two cellular telephones with the same telephone number. Changing the ESN emitted by a cellular telephone to be the same as that emitted by another cellular telephone does not create an "extension" cellular telephone. (Is this according to Webster's definition or Houdini's?) Rather, it merely makes it impossible for the cellular system to distinguish between the two telephones (just like the extension in

your home does!). Furthermore, it is the land line carriers' responsibility to protect you from fraud on your land line system. I once had a problem of when starting to dial out on my home phone, on occasion, I would hear someone hang up real fast and I would then have to hang up again to receive a dial tone. After several of the same instances, and once hearing someone talking before their hanging up, I realized someone was accidentally (or on purpose) tied to my home service. After complaining to the phone company I found out that someone a few blocks away had tied their house phone to mine and were not paying for service. I think this defines fraud and it is the phone companies' responsibility to protect us and guard against it!) ANYWAY CITIZENS - I DIGRESS! PLEASE READ ON ABOUT THE NEXT ABSURDITY. While the commenters (those filing the complaint) wanted all cellular extension service deemed illegal, guess what?

59 Continued: It is technically possible to have the same telephone number for two or more cellular telephones, ("emulators" like me are the only one's who advertise multiple extension phones) each having a unique ESN. If a cellular carrier wishes (wishes? shouldn't this be a public right! It is right now with my service.) to provide this service, it may. In this connection, we will not require that use of cellular telephones comply with an industry authentication procedure as required by CTIA, (The Cellular Telephone Industry Association) as this could have the unintended effect of precluding multiple cellular telephones (each with a unique ESN) from having the same telephone number. (I proclaim emulated phones have a unique ESN number. The ESN "chip" inside a phone is unique and original and is not changed or compromised with emulation. Does this not make it very unique? --I digress!)

WHO'S WRITING THIS BILL? WHO IS IT FOR ? WHO IS ASKING FOR IT? AND WHAT IS GOING ON HERE?!!!!

61. With respect to the proposal to allow alteration of ESN's by manufacturers' authorized service centers or representatives; we note that computer software to change ESN's, which is intended to be used only by authorized service personnel, might become available to unauthorized persons through privately operated computer "bulletin boards". We have no knowledge that it is now possible to prevent unauthorized use of such software for fraudulent purposes. Accordingly we decline the request made by Motorola and Ericsson. (Is it therefore also now not possible to prevent the use of such software by the "hackers" and

“chippers” who are cloning phones strictly for fraudulent purposes; such as that seen on 20/20 and Thursday Night Live? Shouldn't this be exactly what and why any FCC Regulation would be addressing and written for? Instead of passing it off and punishing the public by taking away a right guaranteed by a precedence in the Green Supreme Court Decision.

In Houston, Texas not much more than a year ago I was told that employees' of a carrier company had been terminated after selling numerous lists of ESN's and phone numbers to cloners that need these vital statistics to defraud the public and the carrier by charging the calls to the customers' phone number and ESN. I am told that this amounts to millions of dollars in fraud each month.

62. We further agree with the commenters that it would be impractical to apply the new rule to existing equipment. Accordingly, we are not requiring that cellular equipment that is currently in use or has received a grant of type-acceptance be modified or retrofitted to comply with the requirements of this rule. Thus, the ESN rule will apply only to cellular equipment for which initial type-acceptance is sought after the date that our rules become effective. Nevertheless, with regard to existing equipment, we conclude that cellular telephones with altered ESN's do not comply with the cellular system compatibility specification and thus may not be considered authorized equipment under the original type acceptance. Accordingly, a consumer's knowing use of such altered equipment would violate our rules. (and what of those that knowingly purchased this service before it becomes illegal? Do they not have the right under grandfather clause to be legal and not considered criminals when they are in good conscious paying their airtime bill and have no intentions of defrauding anyone?) We further believe that any individual or company that knowingly alters cellular telephones to cause them to transmit an ESN other than the one originally installed by the manufacturer is aiding in the violation our rules. Thus, we advise all cellular licensees and subscribers that the use of the C2+ altered cellular telephones constitutes a violation of the Act and our rules.

Reader, my customers (and I have some on file) have relayed to me their stories about the carriers' knowingly lying to their customer base public for years; that cellular extension service, no matter what name you call it, was committing fraud and a federal offense. Carriers' and their agents have misled the public and directly hurt my business by telling them that it was not legal when they “knew” there was no FCC

law. That "they", the carriers, were not allowed to offer extension service even if they wanted to.

The truth is, now in Dallas, Texas the public does have a choice about cellular extension service by both carriers. As far as I know it may be the only city offering extension service by both carriers in one market in all the US. You can thank companies like mine and C2+, because without us the carriers would not have felt pressured to our competition and public demand. And the fact there was not a law against it. In the FCC ruling it states some carriers are in a "Test Market". This gives the Carriers an "out" to later tell the public their "test market" did not work, caused software problems, or some other ill will to do away with cellular extension phones all together. But only after the FCC gets rid of us - their competition I have it under very good authority that SWBell in Dallas lost 60,000 customers the first two months to their "flex service". Customers who were paying an average of \$37.00 a month in service fees went to \$9.95 on "flex". This resulted in a monthly recurring loss of \$1,623,000.00 EACH AND EVERY MONTH FOR THE REST OF THAT CELLULAR CUSTOMERS CELLULAR LIFE - IN JUST TWO MONTHS!!!! Do you not think heads rolled over THIS? In a very short period they raised the cost of "flex" to \$19.95 a month and their competition's price for the service at \$24.95 leaves room for another increase. Do you not think someone would not perjure themselves to help their company regain these losses or keep their jobs? Does this sound fair to you? Does this sound like free enterprise to you? Of course not!

They went up to \$19.95 over night! Is it any wonder they are actively trying to stop competition from all those "outside" the industry. Is it fair that carriers be allowed to eliminate businesses from competition? If we had not developed this technology do you think you would even have a choice right now? If SWBell had not offered it do you think Metrocel would have initialized it into their system?

The truth is Bell South in Florida started an extension service in September of 1991.

The truth is some companies that offer extension service like mine have been asked by carriers and agents to purchase "exclusive rights" or buy outs; we feel only to put it on a shelf where no one could have it. But now It will be determined that their "test market" was a failure and they will revert back to their old ways. AFTER they see to it that the FCC puts us to rest.

KNOW AND PROTECT YOUR CONSUMER AND PERSONAL RIGHTS

CARRIER

1. Uses limited to carriers local coverage.
2. Activation charges, program fees, and continuing monthly charges.
3. Secondary phone cannot "roam".
4. In most cases only one phone may be powered "on" at one time.
5. Monthly charges and fees are subject to increase.
6. Designed to sell more lines and monthly charges rather than selling airtime.
7. Only two phones allowed on a system.

AMERICA RE CELL THE CELLULAR EXTENSION

1. Works on all systems "World Wide"
2. Only a one time "emulation" charge.
3. Either phone may "roam"
4. Same due to cellular system design.
5. No additional charges
6. Designed for convenience and security at an affordable price that will pay for itself.
7. May have unlimited phones on same number.

If a car dealer sells a car and the new owner kills someone with it; is the dealer held responsible? If someone buys a gun from a dealer who sells it by legal means and that person kills someone; is the gun dealer held liable?

When we sell extension service to customers we have them sign an affidavit stating it is their service we are emulating the phone to and the customer will not defraud the carrier of the airtime fee. In event the phone is mailed in to us, application must be notarized that it is being requested by the applicant by proof of drivers licensee to avoid any attempt of fraud.

Now, if they are really concerned about fraud, it is being done by "chippers" and possible emulators who change the ESN chip in the phone to defraud the carriers. Not by businessmen like myself who advertise and offer a service to the public. I surely wouldn't advertise to the public and open myself up to a felony fraud warrant.

The US Treasury Dept. called once and said that someone who saw my advertisement in the paper had turned me in. He at first inquired about my service. He was asking all the right questions and I inquired as to "who" he was? He told me he was an investigator for the US Treasury Dept. and they

were the office in charge of FCC fraud.

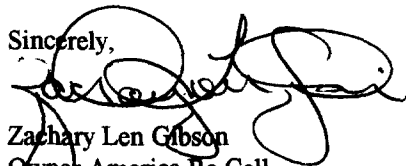
I told the gentleman to come over and I would show him exactly how it was done and that I was not breaking any law. Furthermore, after reading our application to him, I was told that I had all my bases covered and of all the people he had dealt with, I was the only one who had gone to the extent I had to try and eliminate fraud.

So here is my question. If small business is the backbone of our nations economy. If "they" want to reinvent government: Why not keep government out of a citizens' rights issue. It has all ready been proven that extension phones are legal.

Here is a reasonable solution, if it must lead to this, you license and regulate car dealers and the dealer or salesman is not arrested if the person they sell a car to kills someone with the car. You license and regulate gun dealers but the dealer is not arrested if the gun is used in a crime.. So license and regulate me but - don't close my doors and say the other guy can do it, but I can't. Don't close my doors and tell me I must move to Mexico or Canada and take my money and hire a work force there. Don't tell me to close my doors and then tell customers in some area that would like to have the service, "Oh, I'm sorry, we don't' offer that service !

Thank you again for your time. I really feel this is an important issue of "our", the peoples', rights not just in keeping some businesses form shutting down.

Sincerely,



Zachary Len Gibson
Owner America Re Cell
214-352-1444

CC: Congressman Dick Arney
Senator Kay Bailey Hutchins
Kevin S. Marshall Atty.
Gov. Elect George W. Bush
Dallas Morning News
Dallas Radio & TV Stations